IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-V-

20-CV-1602-LJV

THE PREMISES AND REAL PROPERTY WITH BUILDINGS, APPURTENANCES, AND IMPROVEMENTS AT 132 LAKEFRONT BLVD., BUFFALO, NEW YORK, THAT IS, ALL THAT TRACT OR PARCEL OF LAND, SITUATED IN THE TOWN OF BUFFALO, COUNTY OF ERIE, STATE OF NEW YORK, AND MORE PARTICULARLY DESCRIBED IN A CERTAIN DEED RECORDED IN THE ERIE COUNTY CLERK'S OFFICE IN BOOK 11275, PAGE 6575;

THE PREMISES AND REAL PROPERTY WITH ALL BUILDINGS, APPURTENANCES, AND IMPROVEMENTS, LOCATED AT 465 BRICKELL AVENUE, UNIT 5102, MIAMI, FLORIDA, THAT IS, ALL THAT TRACT OR PARCEL OF LAND, SITUATED IN THE TOWN OF MIAMI, COUNTY OF DADE AND STATE OF FLORIDA, AND MORE PARTICULARLY DESCRIBED IN A CERTAIN DEED RECORDED IN DADE COUNTY CLERK'S OFFICE BOOK 26656, PAGE 4810;

THE PREMISES AND REAL PROPERTY WITH ALL BUILDINGS, APPURTENANCES, AND IMPROVEMENTS, LOCATED AT 1201 20TH STREET, UNIT 209, MIAMI, FLORIDA, THAT IS, ALL THAT TRACT OR PARCEL OF LAND, SITUATED IN THE TOWN OF MIAMI, COUNTY OF DADE AND STATE OF FLORIDA, AND MORE PARTICULARLY DESCRIBED IN A CERTAIN DEED RECORDED IN DADE COUNTY CLERK'S OFFICE BOOK 30168, PAGE 4010.

Defendants.

JOINT MOTION FOR PROTECTIVE ORDER

PLEASE TAKE NOTICE that the Plaintiff, United States of America, by its attorney, James P. Kennedy, Jr., United States Attorney for the Western District of New York, Grace M. Carducci, Assistant United States Attorney, of counsel, and putative claimant, Michael Luehrsen, by and through his attorney, Joel L. Daniels, Esq., jointly move this Court for a protective order pursuant to Title 18 United States Code, § 981(g)(3) partially unsealing Special Agent Kammeraad's affidavit. In support of this Motion, the parties state as follows:

- 1. On October 30, 2020, the United States of America filed a Verified Complaint for Forfeiture against the three above-captioned real properties. *See* Dkt. 1. In support of its complaint, the government filed an affidavit sworn to by FBI Special Agent Jason Kammeraad. *See* Dkt. 12. The Court then granted the government's motion to seal Special Agent Kammeraad's affidavit. *See* Dkt. 11.
- 2. The parties now jointly move pursuant to Title 18 United States Code, § 981(g)(3) to partially unseal Special Agent Kammeraad's affidavit so that the government can share the affidavit with Joel L. Daniels, Esq., counsel for the putative claimant, Michael Luehrsen. To protect the government's interests identified in its motion to seal (Dkt. 9), the parties have agreed to partially unseal the affidavit subject to the conditions identified below.
- 3. Title 18 United States Code, § 981(g)(3) provides that "[w]ith respect to the impact of civil discovery....the court may determine that a stay is unnecessary if protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case." The statute therefore contemplates a

court's authority to issue a protective order in a civil forfeiture case in order to protect the government's investigative interests.

- 4. The parties jointly move for the affidavit of FBI Special Agent Jason Kammeraad (Dkt. 12) to be partially unsealed to be utilized by Joel L. Daniels, Esq., as counsel for the putative claimant, Michael Luehrsen, solely in connection with pretrial, trial or other proceedings in this action, including any appeals.
- 5. The parties agree that the affidavit shall not be disclosed to the public, and it shall not be disclosed to third parties by Joel L. Daniels, Esq. or Michael Luehrsen except as necessary in connection with pretrial proceedings, trial preparation or other proceedings in this action.
- 6. The parties agree that the copies of the affidavit set forth above shall not be provided to third parties except those persons or entities employed or engaged for the purpose of assisting in the defense of this action.
- 7. The parties agree that copies of the affidavit set forth above shall not be provided to the putative claimant, Michael Luehrsen, absent further order of the Court.
- 8. The parties agree that the unauthorized copying, dissemination, and/or posting of copies, or the contents, of the affidavit on the internet or through any form of social media shall constitute a violation of the terms of the Court's order.
- 9. The parties agree that nothing in the Court's shall preclude Joel L. Daniels, Esq. or Michael Luehrsen from disclosing the contents of the affidavit during the course of

litigation of this action in pretrial proceedings, in memoranda filed, at trial, or in post-trial proceedings.

10. The parties agree that Joel L. Daniels, Esq. or Michael Luehrsen may apply to the Court for an order specifically permitting public disclosure of the above-mentioned material.

CONCLUSION

Based on the foregoing, the parties respectfully request that the Court enter a Protective Order partially unsealing Special Agent Kammeraad's affidavit.

DATED: Rochester, New York December 14, 2020

> JAMES P. KENNEDY, JR., United States Attorney Western District of New York

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